

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: 08-H-14123-RAH;
	)	09-O-13214 (Cons.)
<b>ALAN MARK SCHNITZER,</b>	)	
	)	<b>DECISION</b>
<b>Member No. 129024,</b>	)	
	)	
A Member of the State Bar.	)	
	)	

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**I. Introduction**

In this consolidated default disciplinary matter, respondent **Alan Mark Schnitzer** is charged in three counts with failing to comply with conditions attached to a public reproof previously imposed on him. Respondent is also charged in a single-client matter with committing an act of moral turpitude and failing to cooperate with a State Bar investigation.

The court finds respondent culpable, by clear and convincing evidence, of all of the alleged charges. And, in light of his misconduct, the aggravating circumstances, and the lack of any mitigating circumstances, the court recommends, among other things, that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that respondent be suspended from the practice of law for a minimum of six months and must

remain suspended until the State Bar Court grants a motion to terminate his suspension. (Rules Proc. of State Bar, rule 205.)<sup>1</sup>

## **II. Significant Procedural History**

On December 16, 2010, the State Bar of California, Office of the Chief trial Counsel (State Bar) initiated this proceeding by filing and properly serving a Notice of Disciplinary Charges (NDC) on respondent by certified mail, return receipt requested, addressed to respondent at his official membership records address (official address). On January 25, 2011, the NDC was returned by the U.S. Postal Service (USPS), stamped “Unclaimed.”

Between January 4 and February 7, 2011, Deputy Trial Counsel Mia Ellis (DTC Ellis) communicated with respondent and encouraged him to file a response to the NDC. During this time period, DTC Ellis and respondent exchanged a series of emails and voicemails. However, despite the efforts of DTC Ellis, respondent did not file a response to the NDC or participate in the present proceedings.

As respondent did not file a response to the NDC as required by rule 103 of the Rules of Procedure of the State Bar of California (Rules of Procedure), on February 9, 2011, the State Bar filed a motion for the entry of respondent’s default.<sup>2</sup> A copy of the motion was properly served on respondent that same day.

When respondent failed to file a written response within 10 days after service of the motion for the entry of his default, the court, on March 3, 2011, filed an order of entry of default

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<sup>1</sup> Effective January 1, 2011, the Rules of Procedure of the State Bar of California were amended. The court, however, orders the application of the former Rules of Procedure in this hearing department matter based on its determination that injustice would otherwise result. (See Rules Proc. of State Bar (eff. January 1, 2011), Preface.) Therefore, all references to the Rules of Procedure in this decision are to the former rules of procedure, which were in effect prior to January 1, 2011, unless otherwise stated.

<sup>2</sup> The State Bar also requested that the court take judicial notice of respondent’s official membership records address history. The court grants this request.

and involuntary inactive enrollment.<sup>3</sup> A copy of said order was properly served on respondent. This order not was subsequently returned by the USPS as undeliverable or for any other reason. Thereafter, the State Bar waived a hearing in this matter, and it was submitted for decision on March 24, 2011.<sup>4</sup>

### **III. Findings of Fact and Conclusions of Law**

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in California on June 17, 1987, and has since been a member of the State Bar of California.

#### **B. Case No. 08-H-14123 – Violation of Repeal Conditions**

##### **Facts**

On or about March 26, 2007, respondent entered into a stipulation re: facts, conclusions of law and disposition (stipulation) with the State Bar in case numbers 05-O-05359 (06-O-11532). On or about May 22, 2007, the State Bar Court filed an order approving the stipulation. Effective June 12, 2007, respondent was publicly reprobated for a period of one year by the State Bar Court.

As a condition of the public reprobation, respondent was ordered to:

1. Provide to the Office of Probation of the State Bar of California (Office of Probation) proof of his completion of six hours of MCLE courses by December 12, 2007;

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<sup>3</sup> Respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e), was effective three days after the service of this order by mail.

<sup>4</sup> The declaration of DTC Ellis and Exhibit 1 attached to the motion for the entry of respondent's default, as well as Exhibit 1 attached to the State Bar's brief on the issues of culpability and discipline, are admitted into evidence.

2. Submit written quarterly reports to the Office of Probation of the State Bar of California (Office of Probation) on each January 10, April 10, July 10 and October 10 of the condition period attached to the reprobation, and in each quarterly report, state under penalty of perjury: (a) whether he has complied with the State Bar Act, Rules of Professional Conduct, and all conditions of the reprobation during the preceding calendar quarter; and (b) whether there were any proceedings pending against him in the State Bar Court, and if so, the case number and current status of that proceeding (quarterly report); and to submit a final report containing the same information no earlier than 20 days prior to the expiration of the condition period attached to the reprobation and no later than the last day of the condition period (final report); and
3. To contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of his probation within 30 days from the effective date of discipline or by July 12, 2007.

Respondent, however, did not comply with the following conditions attached to his public reprobation:

1. Respondent did not complete six hours of Minimum Continuing Legal Education (MCLE) by December 12, 2007. As of the date the NDC was filed, respondent had not provided proof to the Office of Probation of his completion of six hours of MCLE courses;<sup>5</sup>
2. Respondent did not submit his quarterly report that was due on October 10, 2007, until April 24, 2008;
3. Respondent did not submit his quarterly report that was due on January 10, 2008, until May 15, 2008;
4. Respondent did not submit his quarterly report that was due on April 10, 2008, until May 22, 2008;
5. Respondent failed to file with the Office of Probation the final quarterly report that was due on June 12, 2008; and
6. Respondent did not meet with his assigned probation deputy to discuss the terms and conditions of his probation until April 22, 2008.

On or about June 26, 2008, the Office of Probation telephoned respondent and left a message regarding his final quarterly report and his MCLE compliance. On or about July 16, 2008, respondent called the Office of Probation to advise them that he would be sending his final

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<sup>5</sup> There is no indication in the record that respondent has subsequently provided the Office of Probation with proof of this requirement.

quarterly report and proof of his MCLE compliance. Thereafter, respondent failed to provide the quarterly report and failed to provide proof of MCLE compliance.

### **Conclusions of Law**

#### ***1. Counts One through Three – (Rules Prof. Conduct, rule 1-110<sup>6</sup> [Failure to Comply with Repeval Conditions])***

Rule 1-110 provides that a member shall comply with conditions attached to public or private reprovals or other discipline administered by the State Bar.

By not completing six hours of MCLE courses and by not providing proof to the Office of Probation of his completion of six hours of MCLE courses, respondent failed to comply with a condition attached to a public reapproval, in willful violation of rule 1-110.

By not timely submitting quarterly reports that were due on October 10, 2007, January 10, 2008, and April 10, 2008, and by failing to file the final quarterly report that was due on June 12, 2008, respondent failed to comply with a condition attached to a public reapproval, in willful violation of rule 1-110.

By not timely meeting with his assigned probation deputy to discuss the terms and conditions of his probation, respondent failed to comply with a condition attached to a public reapproval, in willful violation of rule 1-110.

### **C. Case No. 09-O-13214 – The Szabo Personal Injury Matter**

#### **Facts**

In or about 2006, Amanda Szabo (Szabo) employed respondent to represent her in a personal injury matter following her involvement in a February 26, 2006 automobile accident (the personal injury matter).

The statute of limitations in Szabo's personal injury matter ran on February 26, 2008.

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<sup>6</sup> All further references to rule(s) are to the California Rules of Professional Conduct, unless otherwise stated.

On or about February 28, 2008, respondent filed a complaint on Szabo's behalf entitled, *Amanda Szabo v. Carolyn Earlywine*, Orange County Superior Court, case no. 30-2008-00103293 (*Szabo v. Earlywine*). On or about February 29, 2008, respondent spoke to Mercury Insurance claims examiner, Darla Sotelo, and told her that he would be forwarding a copy of the summons and complaint filed in *Szabo v. Earlywine*.

From in or about April 2008 through in or about December 2008, Sotelo wrote to respondent monthly requesting a copy of the summons and complaint filed in *Szabo v. Earlywine*. The monthly letters were properly mailed to respondent. Respondent received the letters.

On or about January 20, 2009, Mercury Insurance claims examiner Jerry Williams (Williams) wrote respondent and requested proof that the statute of limitations was properly protected. Williams properly mailed the January 20, 2009 letter to respondent. Respondent received the letter.

On or about January 29, 2009, respondent submitted to Mercury Insurance what he represented were correct copies of the filed summons and complaint in *Szabo v. Earlywine*. In fact, respondent had altered the filing date on the summons and complaint that were submitted to Mercury Insurance, or had caused the filing date to be altered, to a February 26, 2008 filing date, which would have been within the statute of limitations in the personal injury matter.

On or about March 19, 2009, claims examiner Williams wrote respondent and noted that there was a discrepancy between the filing dates indicated on the complaint and the date listed on the court website. Thereafter, Mercury Insurance obtained copies of the summons and complaint with the correct filing date from the court in *Szabo v. Earlywine*.

On or about June 23, 2009, the State Bar opened an investigation, in case no. 09-O-13214, pursuant to a complaint made against respondent by Michael Evers from Mercury Insurance (the Mercury Insurance complaint).

On or about August 13, 2009, a State Bar investigator mailed a letter to respondent at his address of record regarding the Mercury Insurance complaint. The investigator's August 13, 2009 letter requested that respondent respond in writing by August 28, 2009, to specific allegations of misconduct being investigated by the State Bar in the Mercury Insurance complaint. Respondent received the August 13, 2009 letter, but failed to respond.

On or about August 28, 2009, Carolyn Earlywine's attorney filed a motion for judgment on the pleading in *Szabo v. Earlywine*. In the motion, the attorney noted that the complaint in *Szabo v. Earlywine* had been filed after the two-year statute of limitations had run.

On or about September 4, 2009, respondent filed a request for dismissal in *Szabo v. Earlywine*.

On or about September 14, 2009, a State Bar investigator mailed a second letter to respondent asking respondent to provide a written response to the Mercury Insurance complaint. The State Bar investigator properly mailed the September 14, 2009 letter to respondent at his address of record. Respondent received the letter but failed to provide a response.

Respondent did not provide the State Bar with a written response or otherwise cooperate in the investigation of the Mercury Insurance complaint.

### **Conclusions of Law**

#### ***1. Count Four – (Bus. & Prof. Code, section 6106<sup>7</sup> [Moral Turpitude])***

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty, or corruption. By altering the date on the summons and complaint in *Szabo v.*

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<sup>7</sup> All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

*Earlywine* to appear as if he had filed it within the statute of limitations and by submitting the altered summons and complaint to Mercury Insurance, respondent committed an act involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106.

**2. *Count Five – (Section 6068, subd. (i) [Failure to Cooperate in State Bar Investigation]***

Section 6068, subdivision (i) provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney. By not providing a written response to the allegations in the Mercury Insurance complaint or otherwise cooperating in the investigation of the Mercury Insurance complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

**IV. Mitigation and Aggravation**

**A. Mitigation**

No mitigating factors were submitted into evidence and none could be gleaned from the record. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>8</sup>

**B. Aggravation**

**1. *Prior Record of Discipline***

Effective June 12, 2007, respondent was publicly reprovved with conditions in State Bar Court Case No. 05-O-05359 (06-O-11532). (Std. 1.2(b)(i).) In this matter, respondent failed to perform legal services with competence and failed to respond to client inquiries in two separate client matters. In mitigation, respondent had no prior record of discipline, cooperated with the State Bar, and was suffering from extreme family difficulties at the time of the misconduct. In aggravation, respondent's misconduct resulted in significant harm.

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<sup>8</sup> All further references to standard(s) are to this source.

## ***2. Multiple Acts of Misconduct***

Respondent was found culpable of five acts of misconduct. Multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

## **V. Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed must be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.3, 2.6, and 2.9 apply in this matter. The most severe sanction is found at standard 2.3 which recommends, upon the commission of an act of moral turpitude, that a member receive discipline consisting of actual suspension or disbarment depending on the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) The standards are not mandatory; they may be deviated from when there is a compelling, well-

defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

In addition to the standards, the court is guided by *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166. In *Chesnut*, the Review Department recommended that the attorney be suspended for six months for falsely representing to two judges that he had personally served an opposing party. In mitigation, the attorney was involved in pro bono activities and presented evidence of good character. In aggravation, the attorney lacked candor and had a prior record of discipline involving similar misconduct. In recommending discipline, the Review Department noted that the attorney's past and present misconduct demonstrated a "disturbing willingness to employ deceitful means to accomplish his objectives." (*In the Matter of Chesnut, supra*, 4 Cal. State Bar Ct. Rptr. at p. 177.)

The instant case and *Chesnut* contain several similarities. For instance, both cases involve an intentional misrepresentation committed by an attorney with a prior record of discipline. And like the attorney in *Chesnut*, respondent demonstrated a willingness to use any means necessary to obtain his goals. Consequently, the court finds that the present case warrants a level of discipline comparable to *Chesnut*.

After weighing the evidence, including the factors in aggravation, and considering the standards and the case law, the court finds that the appropriate discipline should include, among other things, a six-month minimum period of actual suspension.

## **VI. Recommendations**

Accordingly, the court recommends that respondent **Alan Mark Schnitzer** be suspended from the practice of law for two years, that execution of the suspension be stayed, and that respondent be actually suspended from the practice of law for six months and until the court

grants a motion to terminate his actual suspension pursuant to rule 205 of the Former Rules of Procedure of the State Bar of California.

If the period of actual suspension reaches or exceeds two years, it is further recommended that respondent remain actually suspended until he has shown proof satisfactory to the State Bar Court of rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct. (See Rules Proc. of State Bar, rules 5.400-5.411.)

It is also recommended that respondent be ordered to comply with the conditions of probation, if any, hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension.

**A. Multistate Professional Responsibility Examination**

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners and provide proof of passage to the Office of Probation, within one year after the effective date of the discipline herein or during the period of his actual suspension, whichever is longer.

**B. California Rules of Court, Rule 9.20**

The court also recommends that respondent be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.<sup>9</sup>

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<sup>9</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

**C. Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: July \_\_\_\_\_, 2011

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RICHARD A. HONN  
Judge of the State Bar Court